

Appl. No. 10/710,337
Response dated 2/25/08
Reply to Office Action of 8/24/2007

REMARKS/ARGUMENTS

Remarks with regards to Information Disclosure Statement

The Examiner states that the information disclosure statement filed 7/11/2004 fails to comply with 37 CFR 1.98(a)(2), which requires legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Applicant submits herewith via EFS Web legible copies of references cited in the information disclosure statement filed 7/11/2004.

Remarks with regards to Specification

The Examiner has objected to the disclosure because of a number of informalities. The Examiner has cited exemplarity locations such as missing spaces between “testing” and “The” on page 26, line 1 of paragraph [0060]. In examining the published version of the specification, Application does not find the errors pointed out by the Examiner. Applicant requests a telephone interview to review and identify any objectionable or rejectable formatting errors in the published specification, which Application will happily correct.

Applicant has detected the following missing colons (“:”) in paragraph subheadings, and requests appropriate amendment to the specification to correct these errors, asserting that these changes are not for the purposes of patentability. These amendments are listed above, and requests are made in reference to Application Publication No. 2005/000802863 A1, and supersedes any and all amendment requests made in the application thus far.

Applicant hereby cancels all amendments made in response to the previous office actions and amendments herein are made according to informalities found in the Application Publication No. 2005/00080263 A1.

Rejections based on 35 U.S.C. §102(b)

The Examiner has rejected claims 1 and 2 under 35 U.S.C §102(b) as being anticipated by Rashotte et al. (Neuroscience & Behavioral Reviews **1984**, 8, 231-237) (“Rashotte”). Applicant traverses the rejection, respectfully disagreeing that Rashotte does not anticipate at all the limitations of the present claims 1 and 2 as amended, because there is no evidence in the methodology of Rashotte that animals associate the lighted symbols with food. Further, there is no control for an animal’s learning the association of stimulus with food preference (e.g., teaching as relates to the claim limitation for the animal’s “choice of a preferred stimulus results in no reward”). The Examiner describes Rashotte as “The experiment begins with a lever that produces a coated food always being marked by lighted rectangle (stimulus) above it while the lever produces an uncoated food was marked by a lighted circle (stimulus) above it (p232, paragraph 6).” This approach teaches away from the method of the invention, because claims 1 and 2 as amended, teach a particular association session comprising “presenting said animal with at least one non-preferred stimulus associated with said food, food stuff or veterinary biologic, wherein said non-preferred stimulus is not most frequently chosen by said animal or chosen at a slower rate or chosen secondly or later from said preference test” (emphasis added). Hence, Rashotte does not teach that lighted rectangle associated with coated food is a non-preferred stimulus.

The Examiner has also rejected claims 1 and 2 under 35 U.S.C §102(b) as being anticipated by Laska et al. (*Learn Mem.* **1998**, 5, 193-203) (“Laska”). Applicant also traverses this rejection, respectfully disagreeing and asserting that Laska does not teach at least the claim limitation of “administering a discrimination learning procedure to an animal selected from said at least one animal wherein said discrimination learning procedure comprises: using a food, food stuff or veterinary biologic; and, utilizing at least one stimulus preference test wherein said stimulus preference test comprises: (a) presenting said animal with at least two distinct stimuli wherein each of said at least two distinct stimuli is associated with an identical reward; and, (b) permitting said animal to choose from said at least two distinct stimuli, wherein choice of any one stimulus

Appl. No. 10/710,337
Response dated 2/25/08
Reply to Office Action of 8/24/2007

results in said identical reward.” Laska does not use a stimulus preference test. Rather, Laska teaches an experiment to test association between visual or olfactory cues of a potential food, in the absence of gustatory cues, and its palatability (p. 195, col. 2, paragraph 5). This does not include all the limitations of methods of claims 1 and 2 of the present invention, and thus does not anticipate those claims.

Rejections based on 35 U.S.C. §103(a)

The Examiner has rejected claims 1-12 and 27-36 as being unpatentable over Laska in view of Tapp, et al. (Learn. Mem. 2003, 10, 64-73) (“Tapp”). As previously asserted above, Applicant does not agree that Laska teaches at least the limitations of the claims of the present invention, where each of distinct stimulus result in identical rewards. In Laska, the choices (i.e., color, shape or odor) did not result in an identical rewards (i.e., cookies were either palatable or unpalatable), creating a critical difference in the methods.

Applicant respectfully points out that Tapp which was published in 2003 may not be appropriate prior art, as the present application claims priority under 35 U.S.C. §119(e) to Application Serial No. 60/483,639, filed July 1, 2003. For both these reasons, withdrawal of the rejection of claims 1-12 and 27-36 based on 35 U.S.C. §103(a) is respectfully requested.

CONCLUSION

Claims 1-12 and 27- 36 are pending in the present application. Claims 1, 3, 27 and 28 are independent claims. Applicant has amended independent claims 1 and 3, as well as amended various paragraphs of the specification.

For at least the reasons stated herein, Applicant respectfully submits that the claims are in condition for allowance. If the Examiner differs in this conclusion, the Examiner is hereby

Appl. No. 10/710,337
Response dated 2/25/08
Reply to Office Action of 8/24/2007

requested to contact Applicant's representative for purposes of a telephone interview at the number listed below before any action (other than an allowance) is initiated.

Respectfully submitted,

/DN58017/

Daniel Nakaji, Reg. No.: 58,017
P. (858) 442-5877
F. (858) 777-5425